

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

No. 4:08-CV-15-BO

MICHAEL McGETHY,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

ORDER

This matter is before the Court on cross motions for Judgment on the Pleadings pursuant to FED. R. CIV. P. 12(c). Plaintiff alleges that the administrative law judge (“ALJ”) improperly discontinued Plaintiff’s disability benefits. Defendant claims that the ALJ’s opinion was supported by substantial evidence. For the reasons stated below, Plaintiff’s Motion for Judgment on the Pleadings is GRANTED and the case is REMANDED for further proceedings consistent with this Order.

I. SUMMARY OF THE INSTANT DISPUTE

On August 29, 2000, Plaintiff applied for and was granted Social Security Disability benefits in Louisiana with an onset date of July 9, 1999. Transcript, hereinafter “T,” pp. 46, 92.¹

¹Plaintiff was awarded benefits based on a finding that he met Listing 1.05C as a result of a work-related accident that took place in April 1999. T pp. 157-58. Listing 1.05C was the old number assigned to address cervical disk disease. The section for disorders of the spine was

Sometime thereafter, Plaintiff moved to North Carolina. On or about June 19, 2003, Plaintiff received a letter notifying him that his condition had improved and his disability benefits would be terminated. T p. 58. Plaintiff filed a statement seeking continuation of his benefits. On March 5, 2004, the Social Security Administration (“SSA”) made a finding that Plaintiff’s condition had improved and his benefits should cease. T p. 70.

On March 12, 2004, Plaintiff requested a continuation of his benefits and filed for a hearing on the cessation. T pp. 84-85. Plaintiff’s case was heard on January 25, 2006. T pp. 32-36. The ALJ issued an unfavorable decision on May 16, 2006. Plaintiff requested Appeals Council review of the ALJ decision, which was denied on November 30, 2007, making the ALJ decision final. Plaintiff then filed a Request for Review of the ALJ’s decision. Plaintiff filed a Motion for Judgment on the Pleadings on May 7, 2008. Defendant filed a Motion for Judgment on the Pleadings on August 19, 2008. A hearing was conducted in Raleigh, North Carolina, on October 15, 2008. These motions are now before the Court.

II. DISCUSSION

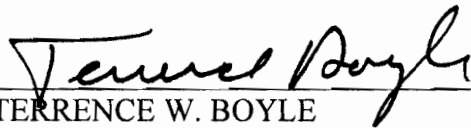
Under the 42 U.S.C. § 405(g), this Court reviews the final decision of the Commissioner to determine: (1) whether substantial evidence supports the Commissioner’s decision, *Richardson v. Perales*, 402 U.S. 389, 390, 401 (1971); and (2) whether the Commissioner applied the correct legal standards. *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir. 1990). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to

amended February 19, 2002, and is now referred to as 1.04. 66 Fed. Reg. 58,010, 58,017-18 (Nov. 19, 2001).

support a conclusion. *Perales*, 402 U.S. at 401.

The ALJ's decision to terminate Plaintiff's benefits is not supported by substantial evidence because Plaintiff has an impairment or combination of impairments which qualify him for a disability. When determining whether a claimant's benefits should be terminated, the burden lies on the Commissioner to prove that significant medical improvement has taken place and is related to claimant's ability to work. 20 C.F.R. § 404.1594(a). Plaintiff began receiving benefits on or about August 29, 2000, due to his degenerative disc disease. Since that time, Plaintiff continues to suffer from degenerative disc disease, has undergone knee surgery, has severe problems with his foot, has a right leg limp, is unstable making any attempts at heel or toe standing or walking, is very unstable with tandem walking, and had a positive straight leg test on the right. Thus, the medical records show that not only has Plaintiff's impairment not improved, it has worsened. Therefore, the ALJ's decision is not supported by substantial evidence and Plaintiff's Motion for Judgment on the Pleadings is GRANTED and the case is REMANDED for further proceedings consistent with this Order.

SO ORDERED, this 5 day of February 2009.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE